# U.S. DISTRICT COURT U.S. District Court, Western District of New York (Buffalo) CIVIL DOCKET FOR CASE #: 1:23-cv-00854-JLS

Frentzel et al v. Mohr et al

Assigned to: Hon. John L. Sinatra, Jr.

Cause: 28:1983 Civil Rights

Date Filed: 08/18/2023 Jury Demand: Plaintiff

Nature of Suit: 440 Civil Rights: Other

Jurisdiction: Federal Question

## **Plaintiff**

Patricia A. Frentzel

# represented by Chad A. Davenport

Rupp Pfalzgraf LLC

New York

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424 Main Street

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Buffalo, NY 14202

716-854-3400

Email: davenport@rupppfalzgraf.com

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

#### James J. Graber

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## **Plaintiff**

Nancy J. Anderson

## represented by Chad A. Davenport

(See above for address)

LEAD ATTORNEY

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ATTORNEY TO BE NOTICED

## James J. Graber

(See above for address)

ATTORNEY TO BE NOTICED

# **Plaintiff**

Wendy A. Valint

# represented by Chad A. Davenport

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

James J. Graber

(See above for address)

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# **Plaintiff**

Evan J. Valint

represented by Chad A. Davenport

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

James J. Graber (See above for address) ATTORNEY TO BE NOTICED

# **Plaintiff**

Scott M. Henderson

represented by Chad A. Davenport

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

James J. Graber (See above for address) ATTORNEY TO BE NOTICED

## **Plaintiff**

Cathy A. Henderson

represented by Chad A. Davenport

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LEAD ATTORNEY

ATTORNEY TO BE NOTICED

James J. Graber (See above for address) ATTORNEY TO BE NOTICED

## **Plaintiff**

Erik J. Anderson

represented by Chad A. Davenport

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

James J. Graber (See above for address) ATTORNEY TO BE NOTICED

V.

**Defendant** 

Ralph M. Mohr

represented by Ralph Markus Mohr

Ralph Markus Mohr 5622 Broadway Lancaster, NY 14086 716-681-3305

710-001-3303

Email: rmohr14086@gmail.com

LEAD ATTORNEY ATTORNEY TO BE NOTICED

# **Defendant**

Jeremy J. Zellner

represented by Anthony B. Targia

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**Defendant** 

**Erie County Board of Elections** 

**Defendant** 

George M. Hauss

**Defendant** 

Roger A. Cook

**Defendant** 

Letitia James represented by Daniel Ryan Maguire

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**Defendant** 

Kathy Hochul represented by Daniel Ryan Maguire

(See above for address) *LEAD ATTORNEY* 

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**Defendant** 

Peter S. Kosinski represented by Brian Lee Quail

New York State Board of Elections

40 North Pearl Street

Suite 5

Albany, NY 12207 518-474-6367 Fax: 518-486-4068

Email: brian.quail@elections.ny.gov

LEAD ATTORNEY

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# **Defendant**

Douglas A. Kellner represented by Brian Lee Quail

(See above for address)

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**Defendant** 

Andrew J. Spano represented by Brian Lee Quail

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

**Defendant** 

Anthony J. Casale represented by Brian Lee Quail

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

**Defendant** 

New York State Board of Elections represented by Brian Lee Quail

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text			
08/18/2023	1	COMPLAINT <i>Verified Complaint</i> against All Defendants \$ 402 receipt number ANYWDC-4954017, filed by Erik Anderson, Nancy Anderson, Patricia Frentzel, Cathy Henderson, Wendy Valint, Evan Valint, Scott Henderson. (Attachments: # 1 Summons for all defendants, # 2 Civil Cover Sheet)(Davenport, Chad) (Entered: 08/18/2023)			
08/18/2023	2	MOTION for Preliminary Injunction , MOTION for Declaratory Judgment by Erik Anderson, Nancy Anderson, Patricia Frentzel, Cathy Henderson, Scott Henderson, Evan Valint, Wendy Valint. (Attachments: # 1 Declaration of Chad Davenport, Esq. with Exhibits A-C, # 2 Declaration of Cathy Henderson, # 3 Declaration of Erik Anderson, # 4 Declaration of Evan Valint, # 5 Declaration Nancy Anderson, # 6 Declaration Patricia Frentzel, # 7 Declaration Scott Henderson, # 8 Declaration Wendy Valint, # 9 Memorandum in Support)(Davenport, Chad) (Entered: 08/18/2023)			
08/18/2023	3	First MOTION to Expedite <i>Hearing and Briefing Schedule</i> by Erik Anderson, Nancy Anderson, Patricia Frentzel, Cathy Henderson, Evan Valint, Wendy Valint. (Attachments 1 Declaration Attorney Declaration with Exhibits)(Davenport, Chad) (Entered: 08/18/2023)			
08/18/2023		Case Assigned to Hon. John L. Sinatra, Jr. Notification to Chambers of on-line civil case opening. (TMK) (Entered: 08/18/2023)			
08/18/2023		AUTOMATIC REFERRAL to Mediation The ADR Plan is available for download at <a href="http://www.nywd.uscourts.gov/alternative-dispute-resolution">http://www.nywd.uscourts.gov/alternative-dispute-resolution</a> .(TMK) (Entered: 08/18/2023)			
08/18/2023		Notice of Availability of Magistrate Judge: A United States Magistrate of this Court is available to conduct all proceedings in this civil action in accordance with 28 U.S.C. 636c and FRCP 73. The Notice, Consent, and Reference of a Civil Action to a Magistrate Judge			

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		form (AO-85) is available for download at <a href="http://www.uscourts.gov/services-forms/forms">http://www.uscourts.gov/services-forms/forms</a> . (TMK) (Entered: 08/18/2023)					
08/18/2023	4	Summons Issued as to Anthony J. Casale, Roger A. Cook, Erie County Board of Elections George M. Hauss, Kathy Hochul, Letitia James, Douglas A. Kellner, Peter S. Kosinski Ralph M. Mohr, New York State Board of Elections, Andrew J. Spano, Jeremy J. Zellr (TMK) (Entered: 08/18/2023)					
08/18/2023	<u>5</u>	NOTICE of Appearance by Chad A. Davenport on behalf of All Plaintiffs (Davenport, Chad) (Entered: 08/18/2023)					
08/18/2023	6	TEXT ORDER granting 3 Motion to Expedite. Given the time sensitive nature of this application, the Court grants Plaintiffs' motion as follows: Plaintiffs shall serve this Text Order and their Preliminary Injunction application papers on Defendants, and file proof of service, by Tuesday, August 22, 2023. Plaintiffs shall ensure that Defendants receive notice by adequate means, such as e-mail, to known counsel for defendants. Defendants' opposition papers on the Preliminary Injunction application are due September 1, 2023. Reply papers, if any, are due September 7, 2023 at 12:00 p.m. The parties shall appear for argument/hearing on the Preliminary Injunction application on September 12, 2023 at 10:00 a.m. in the Chautauqua Courtroom, 8th Floor East, 2 Niagara Square, Buffalo, NY. The parties shall also appear for a status conference on August 24, 2023 at 2:00 p.m. in the Chautauqua Courtroom, 8th Floor East, 2 Niagara Square, Buffalo, NY. SO ORDERED. Issued by Hon. John L. Sinatra, Jr. on 8/18/2023. (KLH) (Entered: 08/18/2023)					
08/18/2023	7	NOTICE of Appearance by James J. Graber on behalf of All Plaintiffs (Graber, James) (Entered: 08/18/2023)					
08/22/2023	8	SUMMONS Returned Executed by Erik J. Anderson, Nancy J. Anderson, Patricia A. Frentzel, Cathy A. Henderson, Wendy A. Valint, Evan J. Valint, Scott M. Henderson. Rog A. Cook served on 8/22/2023, answer due 9/12/2023; Erie County Board of Elections served on 8/22/2023, answer due 9/12/2023; George M. Hauss served on 8/22/2023, answer due 9/12/2023; Ralph M. Mohr served on 8/22/2023, answer due 9/12/2023; Jeremy J. Zellner served on 8/22/2023, answer due 9/12/2023. (Attachments: # 1 Proof of Service - Ralph Mohr, # 2 Proof of Service - Jeremy Zellner, # 3 Proof of Service - Roge Cook, # 4 Proof of Service - George Hauss)(Davenport, Chad) (Entered: 08/22/2023)					
08/22/2023	9	AFFIDAVIT of Service for Summons & Complaint served on NYS Board of Elections, Douglas Kellner, Anthony Casale, Peter Kosinski, Andrew Spano, Letitia James, Kathy Hochul on 08/21/2023, filed by Nancy J. Anderson, Erik J. Anderson, Patricia A. Frentz Cathy A. Henderson, Scott M. Henderson, Evan J. Valint, Wendy A. Valint. (Attachmen # 1 Affidavit of Service - Douglas Kellner, # 2 Affidavit of Service - Anthony Casale, # Affidavit of Service - Peter Kosinski, # 4 Affidavit of Service - Andrew Spano, # 5 Affidavit of Service - Letitia James, # 6 Affidavit of Service - Kathy Hochul)(Davenpor Chad) Modified on 8/23/2023 (JLV). (Entered: 08/22/2023)					
08/22/2023	10	Letter filed by Nancy J. Anderson, Erik J. Anderson, Patricia A. Frentzel, Cathy A. Henderson, Scott M. Henderson, Evan J. Valint, Wendy A. Valint as to George M. Hauss, Andrew J. Spano, Anthony J. Casale, Letitia James, Douglas A. Kellner, Jeremy J. Zellner Roger A. Cook, Kathy Hochul, Peter S. Kosinski, Ralph M. Mohr, Erie County Board of Elections, New York State Board of Elections . (Attachments: # 1 Exhibit Enclosures with Letter)(Davenport, Chad) (Entered: 08/22/2023)					
08/23/2023		E-Filing Notification: 9 AFFIDAVIT of Service; Clerk modified date of service from 08/22/2023 to 08/21/2023 to match papers filed. (JLV) (Entered: 08/23/2023)					
08/24/2023	11	NOTICE of Appearance by Daniel Ryan Maguire on behalf of Kathy Hochul, Letitia					

		James (Maguire, Daniel) (Entered: 08/24/2023)			
08/24/2023	12	NOTICE of Appearance by Ralph Markus Mohr on behalf of Ralph M. Mohr (Mohr, Ralph) (Entered: 08/24/2023)			
08/24/2023	13	Minute Entry for proceedings held before Hon. John L. Sinatra, Jr.: Status Conference held on 8/24/2023 re Plaintiffs' 2 Motion for Preliminary Injunction. Court inquires whether the parties have any concerns about the Court's briefing schedule. Mr. Mohr advises the Court that the statutory certification date of September 14 can be amended if necessary, but military and absentee ballots have to be mailed 45 days prior to November 7. Parties agree that the existing briefing schedule is appropriate. Preliminary Injunction hearing and oral argument remains scheduled for 9/12/2023 at 10:00 AM. Parties to notify the Court if any witnesses are expected to testify at the hearing.  Appearances. For plaintiffs: Chad Davenport and James Graber. For defendant Jeremy Zellner: Anthony Targia. <i>Pro se</i> defendant Ralph M. Mohr. (Court Reporter Bonnie Weber) (KLH) (Entered: 08/24/2023)			
08/30/2023	14				
06/30/2023	14	Letter filed by Letitia James, Kathy Hochul as to George M. Hauss, Andrew J. Spano, Anthony J. Casale, Letitia James, Douglas A. Kellner, Jeremy J. Zellner, Roger A. Cook, Kathy Hochul, Peter S. Kosinski, Ralph M. Mohr, Erie County Board of Elections, New York State Board of Elections <i>Regarding Extension of Time to Answer</i> . (Maguire, Daniel) (Entered: 08/30/2023)			
08/31/2023	15	TEXT ORDER re 14 Defendants' unopposed request for an extension of time to respond the complaint. In light of 6 the current preliminary injunction briefing and argument schedule, Defendants' unopposed request is granted. Defendants shall answer or otherwirespond to the complaint 21 days after this Court issues an order resolving Plaintiffs' preliminary injunction motion. SO ORDERED. Issued by Hon. John L. Sinatra, Jr. on 8/31/2023. (NAK) (Entered: 08/31/2023)			
09/01/2023	<u>16</u>	NOTICE of Appearance by Anthony B. Targia on behalf of Jeremy J. Zellner (Targia, Anthony) (Entered: 09/01/2023)			
09/01/2023	<u>17</u>	DECLARATION re <u>2</u> MOTION for Preliminary Injunction MOTION for Declaratory Judgment filed by Jeremy J. Zellner <i>in opposition by Anthony B. Targia</i> filed by Jeremy J. Zellner. (Attachments: # <u>1</u> Certificate of Service)(Targia, Anthony) (Entered: 09/01/2023)			
09/01/2023	18	RESPONSE in Opposition re 2 MOTION for Preliminary Injunction MOTION for Declaratory Judgment filed by Kathy Hochul, Letitia James. (Attachments: # 1 Declaration of Daniel R. Maguire, # 2 Exhibit A - Legislative History for Chapter 480 Laws of 2021, 3 Exhibit B - Transcript of Assembly Debate)(Maguire, Daniel) (Entered: 09/01/2023)			
09/01/2023	19	DECLARATION filed by Ralph M. Mohr <i>in Support of Preliminary Injunction</i> filed by Ralph M. Mohr. (Attachments: # 1 Exhibit Exhibit A - Rules of the Working Families Party, # 2 Exhibit Exhibit B - Rules of the Conservative Party, # 3 Exhibit Exhibit C - Castiglia transcript, # 4 Exhibit Exhibit D - Ballot certification)(Mohr, Ralph) (Entered: 09/01/2023)			
09/01/2023	<u>20</u>	ANSWER to 1 Complaint, by Ralph M. Mohr.(Mohr, Ralph) (Entered: 09/01/2023)			
09/05/2023	21	RESPONSE to Motion re <u>2</u> MOTION for Preliminary Injunction MOTION for Declaratory Judgment <i>NYSBOE No Position Letter</i> filed by Anthony J. Casale, Douglas A. Kellner, Peter S. Kosinski, New York State Board of Elections, Andrew J. Spano. (Quail, Brian) (Entered: 09/05/2023)			
09/05/2023	22	NOTICE of Appearance by Brian Lee Quail on behalf of Anthony J. Casale, Douglas A. Kellner, Peter S. Kosinski, New York State Board of Elections, Andrew J. Spano (Quail,			

	Brian) (Entered: 09/05/2023)			
23	TEXT ORDER. To the extent that respondents intend to rely on the affidavit cited at Dkt. 18, p. 20 (Maguire Decl. Ex. B), the affidavit must be submitted in time for petitioners to respond to it and the Court to study it. As such, respondents are directed to submit any such affidavit by 9/6/2023 at 12:00 P.M. SO ORDERED. Issued by Hon. John L. Sinatra, Jr. on 9/5/2023. (NAK) (Entered: 09/05/2023)			
24	DECLARATION re <u>18</u> Response in Opposition to Motion, filed by Letitia James, Kathy Hochul filed by Letitia James, Kathy Hochul. (Attachments: # <u>1</u> Exhibit C - Affidavit of Ralph Lorigo)(Maguire, Daniel) (Entered: 09/05/2023)			
25	MOTION for Extension of Time to File, MOTION for Leave to File Excess Pages by Nancy J. Anderson, Erik J. Anderson, Patricia A. Frentzel, Cathy A. Henderson, Scott M Henderson, Evan J. Valint, Wendy A. Valint.(Davenport, Chad) (Entered: 09/06/2023)			
26	TEXT ORDER re 25 Motion for Extension of Time and Motion for Leave to File Excess Pages. Plaintiffs' request for leave to file an additional five pages in their reply memorandum is granted. Plaintiffs' request for a twelve-hour extension to file their reply memorandum is also granted, provided that, by 12:00 p.m. on 9/7/2023, Plaintiffs submit PDF versions of any additional caselaw Plaintiffs plan to use in their reply papers. Plaintiffs are directed to file their reply memorandum by 11:59 p.m. on 9/7/2023. SO ORDERED. Issued by Hon. John L. Sinatra, Jr. on 9/6/2023. (NAK) (Entered: 09/06/2023)			
27	CONTINUATION OF EXHIBITS by Nancy J. Anderson, Erik J. Anderson, Patricia A. Frentzel, Cathy A. Henderson, Scott M. Henderson, Evan J. Valint, Wendy A. Valint. <i>Ca Cited in Plaintiffs' Reply MOL</i> filed by Nancy J. Anderson, Erik J. Anderson, Patricia A Frentzel, Cathy A. Henderson, Scott M. Henderson, Evan J. Valint, Wendy A. Valint. (Attachments: # 1 Exhibit, # 2 Exhibit, # 3 Exhibit)(Davenport, Chad) (Entered: 09/07/2023)			
28	REPLY/RESPONSE to re <u>2</u> MOTION for Preliminary Injunction MOTION for Declaratory Judgment, <u>24</u> Declaration, <u>21</u> Response to Motion, <u>19</u> Declaration, <u>17</u> Declaration, <u>18</u> Response in Opposition to Motion, filed by Nancy J. Anderson, Erik J. Anderson, Patricia A. Frentzel, Cathy A. Henderson, Scott M. Henderson, Evan J. Valin Wendy A. Valint. (Davenport, Chad) (Entered: 09/07/2023)			
29	TEXT ORDER. In light of Dkt. 8-4, Plaintiffs are directed to address, promptly, whether Defendant Hauss has been properly served sufficient to support Plaintiffs' alternative request for injunctive relief affecting that Defendant. SO ORDERED. Issued by Hon. Jo L. Sinatra, Jr. on 9/8/2023. (KLH) (Entered: 09/08/2023)			
30	AFFIDAVIT re 29 Text Order, <i>Service Defendant Hauss</i> by Nancy J. Anderson, Erik J. Anderson, Patricia A. Frentzel, Cathy A. Henderson, Scott M. Henderson, Evan J. Valint, Wendy A. Valint. (Attachments: # 1 Exhibit Exhibits A-C)(Davenport, Chad) (Entered: 09/08/2023)			
31	Minute Entry for proceedings held before Hon. John L. Sinatra, Jr.: Oral argument on 2 Plaintiffs' motion for preliminary injunction held on 9/12/2023. After hearing argument, Court grants the motion in part and denies it in part. Plaintiffs' motion is denied as to an injunction restraining Defendants from enforcing Election Law § 8-308(4), and directing the Erie County Board of Elections to count, canvass, and tally the write-in primary votes for Patricia A. Frentzel. Plaintiffs' motion is granted as to an injunction restraining Defendants from certifying George M. Hauss as the winner of the June 27, 2023, primary election for the Working Families Party and the party's nominee for the position of Grand Island's Town Clerk. Court transcript will constitute the written decision of the Court. Textorder to follow.			
	24 25 26 27 28 29			

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		Appearances. Chad A. Davenport and James J. Graber for plaintiffs. Pro se defendant Ralph Mohr. Daniel Ryan McGuire for defendants Letitia James and Kathy Hochul. (Court Reporter Bonnie Weber) (KLH) (Entered: 09/12/2023)
09/12/2023	32	TEXT ORDER. Upon consideration of the record, argument, and relevant caselaw, it is ordered that: (1) Plaintiffs' request for a preliminary injunction, regarding Election Law § 8-308(4), and the counting, canvassing, and tallying of the write-in primary votes for Patricia A. Frentzel, is DENIED; and (2) Plaintiffs' alternative request for a preliminary injunction is GRANTED, such that the Erie County Board of Elections, along with its officers, agents, servants, employees, attorneys, and all those in active concert with them, including Defendants Ralph M. Mohr, and Jeremy J. Zellner, are hereby preliminarily enjoined from certifying George M. Hauss as winner of the June 27, 2023 primary election for the Working Families Party and the party's nominee for the position of Grand Island's Town Clerk. SO ORDERED. Issued by Hon. John L. Sinatra, Jr. on 9/12/2023. (NAK) (Entered: 09/12/2023)
09/21/2023	33	NOTICE OF INTERLOCUTORY APPEAL as to Dkt. 32, Text Order, on Motion for Preliminary Injunction by Nancy J. Anderson, Erik J. Anderson, Patricia A. Frentzel, Cathy A. Henderson, Scott M. Henderson, Evan J. Valint, Wendy A. Valint. Filing fee \$ 505, receipt number ANYWDC-4980814. (Davenport, Chad) Modified on 9/21/2023 (JLV). (Entered: 09/21/2023)
09/21/2023		E-Filing Notification: 33 NOTICE OF INTERLOCUTORY APPEAL; Pursuant to Local Rule 12.1 of the US Court of Appeals for the Second Circuit, Forms C and D must be completed within 14 days after the filing of a notice of appeal. Forms C and D can be obtained at www.ca2.uscourts.gov. (JLV) (Entered: 09/21/2023)
09/21/2023		E-Filing Notification: 33 NOTICE OF INTERLOCUTORY APPEAL; Within 14 days of filing the Notice of Appeal, the appellant is required to electronically file with the District Court an index of filed documents it wishes the Court of Appeals to consider, called Designation of Record on Appeal. After receipt, the Clerks Office will certify and transmit the index to the Circuit. (JLV) (Entered: 09/21/2023)
09/21/2023		E-Filing Notification: 33 NOTICE OF APPEAL; Clerk modified entry to an INTERLOCUTORY appeal. (JLV) (Entered: 09/21/2023)

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